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10/580,046

02/28/2007

Brian Gay

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DOWELL & DOWELL P.C.
103 Oronoco St.
Suite 220
Alexandria, VA 22314

EXAMINER

YOUNKINS, KAREN L

ART UNIT

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3751

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|-----------------------------------|--|
| Office Action Summary | Application No. 10/580,046 | Applicant(s) GAY, BRIAN | |
| | Examiner KAREN YOUNKINS | Art Unit 3751 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/19/2006 (preliminary amendment).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/28/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 11, and 29-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 29-37 are drawn to method claims, however claims 29-37 each depend from an apparatus claim. The hybrid method/apparatus subject matter renders these claims indefinite.

4. Claim 11 recites the limitation "the atomisation" in page 3. There is insufficient antecedent basis for this limitation in the claim. For the purposes of examination, the examiner assumes Claim 11 depends on Claim 10 instead of Claim 1, as Claim 10 introduces the limitation of 'atomisation'.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-14, 16-22, 28-30, and 34-35 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 6,302,122 to Parker et al. (Parker).

Art Unit: 3751

7. With reference to claims 1-14 and 16-22, Parker teaches a chamber (booth, see figure 1), means for washing the skin (foot rinser), and means for applying a composition (50). The means for washing the skin and the means for applying a composition are separate. The means for washing the skin (foot rinser) is a device capable of delivering water in the form of a spray to the skin of a user. Further, the device is capable of directing water toward a central region of the chamber, as during normal use the device directs water toward a central region of the chamber where a user stands. As such, the device is capable of delivering water at a direction such that the walls of the chamber are not exposed to a large amount of water. The device includes a number of longitudinally disposed jets or sprays that act to direct water to the head and/or torso and/or leg region of the user, see figure 1. The device is a substantially similar device to a domestic shower head as claimed.

The means for washing the skin is capable of at least partially removing a dead skin cell from the skin of the user as the foot sprayer sprays water onto a user's skin. The apparatus includes means for generating hot atomized water by connecting a hot water source to atomizing nozzles 51. The means for applying a composition relies on atomization of the composition within 51, and the atomization is achieved by the process of air atomization as nozzles 51 are preferably air atomizers.

The means for applying a composition includes a reservoir (84), a pump (86), and a nozzle (51) as claimed. The reservoir (auxiliary reservoir) 84 is capable of dispensing moisturizers, aromas, and disinfectants. In operation, the reservoir, pump, and nozzle are connected such that the composition is deposited onto the skin of a

Art Unit: 3751

user. The means for applying a composition is further achieved by misting, and moves relative to the user during application (see figure 10).

The chamber includes means for removing effluent (drain hole 46) from the chamber as claimed. Further, the chamber is a completely enclosed shower recess commonly used in domestic bathrooms, see figure 1. The apparatus includes means for evaporating moisture from the surface of the user (fan 88) as claimed, and a foot rest (40) so that the user is capable of applying an agent onto the leg without excessive bending on the part of the user.

8. With reference to claims 29-30 and 34-35, the normal use of the apparatus of Claim 1 as discussed in pp-7 above meets the claim limitation of a method of coating the skin with a composition using the apparatus according to claim 1. Further, the steps of a user entering the chamber, washing the skin using the means for washing the skin, and applying the composition to the skin using the means for applying the composition (a self-tanning formula) are met during the normal use of Parker's device. The application of a moisturizer to the skin may be done during normal use of Parker's device, see column 5 lines 39-43.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 23-27, and 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker.

11. With reference to claims 23-25, and 27, As previously discussed in pp-7 above, further Parker teaches the apparatus according to claim 1 including means for applying a composition (50) and means for washing the skin of a user (foot rinser).

Parker fails to show the apparatus in a kit as claimed.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have supplied the components of the device of Claim 1 as a kit to use the device in a pre-existing shower unit. The kit is a substantially self-contained unit adapted to be connected to the existing plumbing in a shower recess as claimed, and includes an atomizing nozzle (51) capable of applying a composition to the skin of a user.

12. In reference to claim 26, Parker as modified in pp-11 above discloses the claimed invention except for dimensions of about 1300 mm high by 275 mm wide and about 130 mm deep. It would have been an obvious matter of design choice to have made the dimensions of about 1300 mm high by 275 mm wide and about 130 mm deep since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

13. With reference to claims 36-37, the normal use of Parker as modified in pp-11 above meets the claim limitation of a method of coating the skin with a composition using a kit according to claims 23 or 25.

Art Unit: 3751

14. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parker in view of US Patent Application Publication No. 2001/0029961 to Laughlin.

15. As previously discussed in pp-7 above, further Parker fails to show a rotating platform, wherein in use the user is moved relative to the means for applying a composition by means of the rotating platform.

Laughlin teaches a rotating platform (20). The rotating platform (20) moves a user relative to means for applying a composition results in uniform application of the composition of a user.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the device of Parker with a rotating platform as claimed as taught by Laughlin to uniformly apply a composition to a user.

16. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parker in view of USPN 6,554,208 to Venuto, Sr (Venuto).

17. As previously discussed in pp-10 above, further Parker fails to show the washing step including the use of an exfoliant.

Venuto teaches exfoliants are commonly known to be used in spray chamber systems, see column 1 line 23.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have included an exfoliant during the washing step to exfoliate the users skin.

18. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,424,598 to Cima.

Art Unit: 3751

19. As previously discussed in pp-8 above, further Parker fails to show the method including exposing the skin of the user to steam.

Cima teaches a method of exposing the skin of a user to steam via 70.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have included means by which steam is generated as taught by Cima in the device of Parker and to have used the steam generator therefore exposing the skin of the user to steam during the operation of the modified device to provide a pleasing skin effect on the user. It would have been further obvious to have exposed the skin to steam after the washing step as the user's skin is clean at that time.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN YOUNKINS whose telephone number is (571)270-7417. The examiner can normally be reached on Monday through Friday 7:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. Y./

Examiner, Art Unit 3751

/Gregory L. Huson/

Supervisory Patent Examiner, Art Unit 3751